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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

HUMBERTO SUAREZ, Plaintiff and Respondent, v. COUNTY OF LOS ANGELES, Defendant and Appellant.	B210823 (Los Angeles County Super. Ct. No. BC353872)

APPEAL from post-judgment order of the Superior Court of Los Angeles County. Paul Gutman, Judge. Affirmed in part; reversed in part and remanded.

Caskey & Holzman, Marshall A. Caskey, Daniel M. Holzman and Thomas L. Dorogi for Plaintiff and Respondent.

Collins Collins Muir + Stewart, Tomas A. Guterres, Catherine M. Mathers and Eric Brown for Defendant and Appellant.

A jury found that defendant County of Los Angeles (the County) violated plaintiff Humberto Suarez's rights under the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.) and awarded him $5,000 in damages. The County appeals from the trial court's post-judgment orders awarding Suarez $193,582.50 in attorney fees and $9,095.12 in costs, and denying the County's request for attorney fees and costs. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

BACKGROUND[1]

Suarez's first amended complaint against the County alleged the following: Suarez is deaf and unable to speak. In August 2005, officers of the Los Angeles Police Department mistakenly arrested Suarez, believing that Suarez was his brother. The County detained Suarez in jail for eight days, during which time Suarez made several requests for a sign-language interpreter and a telephone for the hearing impaired, all of which the County denied. On the eighth day of his confinement, Suarez obtained the assistance of a sign-language interpreter, and communicated to the trial court that the officers had arrested the wrong person. The court ordered Suarez's release on that same day.

Suarez alleged the following causes of action against the County: (1) violation of the Americans with Disabilities Act (42 U.S.C. § 12132); (2) violation of the Rehabilitation Act (29 U.S.C. § 794); (3) deprivation of civil rights (42 U.S.C. § 1983); (4) false imprisonment under the California Tort Claims Act, and (5) intentional infliction of emotional distress under the California Tort Claims Act.[2]

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[1] While we have endeavored to provide an accurate and detailed recitation of the case background, we note at the outset that our ability to do so is necessarily hindered by the parties' failure to include the trial transcripts.

[2] In addition to the County, Suarez named the City of Los Angeles and the City of Torrance. We refer only to the County because it is the sole defendant party to the present appeal.

The County moved for summary judgment on all claims, or in the alternative, summary adjudication on each claim. The trial court denied summary judgment, but granted summary adjudication in the County's favor on the third, fourth, and fifth causes of actions.

The County subsequently served Suarez with an offer to compromise under Code of Civil Procedure section 998.[3] The written offer provided:

"Pursuant to California Code of Civil Procedure § 998, Defendant COUNTY OF LOS ANGELES (hereinafter "COUNTY") offers to have a judgment entered in favor of Plaintiff Humberto Suarez in this action in the sum of $8,000, in satisfaction of all claims for damages, cost and expenses, and interest in this action plus reasonable attorney's fees to be determined by the Court but not to exceed $12,000."

Suarez rejected the offer and trial commenced on April 21, 2008. On or around that date, Suarez dismissed his second cause of action for violation of the Rehabilitation Act for a reason unspecified in the record. The parties proceeded to litigate the remaining first cause of action for violation of the ADA. Approximately one week later, the jury found that the County discriminated against Suarez on the basis of his hearing impairment and was deliberately indifferent to Suarez's rights under the ADA. The jury awarded Suarez damages in the amount of $5,000. The final judgment provided that Suarez would recover $5,000 (with a seven percent interest rate per annum) from the County along with attorney fees and costs to be determined at a later time.

After the verdict, Suarez moved for attorney fees in the amount of $193,582.50, and costs in the amount of $9,095.12, on the ground that he was the prevailing party in an action under the ADA (42 U.S.C. § 12205). The County moved for attorney fees in the amount of $113,512.50 and costs in the amount of $11,072.26, based on the trial court's summary adjudication of the third, fourth, and fifth causes of action in its favor (§ 1038,

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[3] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

42 U.S.C. § 1988). Additionally, the County filed a costs memorandum in the amount of $12,164 pursuant to section 998, which Suarez sought to tax in its entirety.[4]

At the July 30, 2008 hearing, the trial court ruled that the County was not entitled to attorney fees under section 1038 because the County only obtained summary adjudication, which did not fall within the purview of the statute. The County maintained that it was also seeking attorney fees under 42 U.S.C. § 1988, and the trial court responded: "I'll get to that." The trial court went on to order additional briefing on the issue of whether the County's section 998 offer was "conditional" because it imposed a ceiling on Suarez's attorney fees and continued the matter to a later date.

The parties submitted additional briefing on the issue of whether the County's offer was conditional because of the attorney fees ceiling. In the briefing, Suarez raised the additional argument that the County's offer was facially void because it did not contain a provision that allowed Suarez to indicate acceptance of the offer by signing a written statement to that effect.

At the August 29, 2008 hearing, the parties' arguments focused on Suarez's argument that the County's offer was facially void. The trial court indicated that it would take the matter under submission and issue a ruling addressing all of the issues raised by the parties. The County reminded the court that: "At the last hearing, the court had denied the county's motion for attorney's fees and had addressed it based on the 1038 issues. I don't know that the court ever actually made a ruling based on the 1988 because our motion for attorney's fees actually had two lines, two bases for the request. The court denied it on the basis of 1038, but never expressed an opinion one way or the other." The court replied: "I don't remember. I'll revisit it in my order."

On September 2, 2008, the court reiterated its July 30, 2008 ruling that the County was not entitled to attorney fees under section 1038. The court did *not* address the County's argument that it was also seeking attorney fees under 42 U.S.C. § 1988.

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[4] It appears the County's memorandum of costs overlaps much of the costs requested in the motion for attorney fees and costs.

The court then stated that Suarez's entitlement to attorney fees and the County's entitlement to costs "hinged on the acceptability of the County's statutory Offer of Compromise under Section 998 of the Code of Civil Procedure." The trial court ruled that the offer's ceiling on attorney fees did not render it conditional. The trial court went on to rule, however, the offer was "a nullity" and "invalid" because it lacked the "critical provision" "that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted."

Having determined that the County's offer was void, the trial court issued the following rulings: "Suarez is determined to be the prevailing party and his Motion to Strike County's Costs Memorandum is **GRANTED**. [¶] Conversely, Suarez is entitled to his costs pursuant to C.C.P. Section 1032(b). [¶] Moreover, as the prevailing party and pursuant to the provisions of 42 U.S.C.A. Section 12205 and 28 C.F.R. Section 35.175, Plaintiff is entitled to his attorneys' fees. Those fees, found by this court to be reasonable, are awarded to plaintiff in the sum requested, $193,582.50."

The County timely appealed from the trial court's post-judgment order.

DISCUSSION

I. Overview

This appeal presents multiple issues for our consideration:

1. Was the County's section 998 offer valid? No, because the County's offer failed to comply with the clear and unambiguous language of section 998.

2. Is the County entitled to attorney fees and costs under section 1038 because it obtained summary adjudication on the fourth and fifth causes of action? No, because summary adjudication does not fall within the purview of section 1038.

3. Is the County entitled to attorney fees and costs under 42 U.S.C. § 1988 because it obtained summary adjudication on the third cause of action? The award of attorney fees and costs under this provision is left to the discretion of the trial court.

Because the trial court did not exercise its discretion in this case, we remand the matter for a ruling on the County's motion.

4. Is Suarez entitled to his attorney fees and costs pursuant to 42 U.S.C. § 12205 as the prevailing party in the litigation? We conclude that Suarez, as the prevailing party on the ADA claim, is entitled to his attorney fees and costs under that provision.

5. Did the trial court abuse its discretion by awarding Suarez $193,582.50 in attorney fees? We conclude that the County failed to meet its burden of demonstrating a clear showing of abuse in the amount of attorney fees awarded to Suarez. We also conclude that the trial court should have ruled on the County's motion to tax individual costs requested by Suarez, which it did not do below.

6. Is any portion of the trial court's order subject to reversal due to judicial bias? On the appellate record before us, we conclude there is no evidence of judicial bias and thus no basis for reversal on that ground.

II. Validity of the County's section 998 offer

Section 998, subdivision (b) provides in relevant part:

"[A]ny party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. The written offer *shall* include a statement of the offer, containing the terms and conditions of the judgment or award, *and a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted.* Any acceptance of the offer, whether made on the document containing the offer or on a separate document of acceptance, shall be in writing and shall be signed by counsel for the accepting party or, if not represented by counsel, by the accepting party." (Italics added.)

The County's written section 998 offer to Suarez provided:

"Pursuant to California Code of Civil Procedure § 998, Defendant COUNTY OF LOS ANGELES (hereinafter "COUNTY") offers to have a judgment entered in favor of Plaintiff Humberto Suarez in this action in the sum of $8,000, in satisfaction of all claims for damages, cost and expenses, and interest in this action plus reasonable attorney's fees to be determined by the Court but not to exceed $12,000."

This appeal presents the issue of whether the County's settlement offer was invalid because it did not include a provision that allowed Suarez to "indicate acceptance of the offer by signing a statement that the offer is accepted."[5] (§ 998, subd. (b).)

We begin by reviewing the general and accepted principles of law applicable to section 998 offers: "An offer to compromise under Code of Civil Procedure section 998 must be sufficiently specific to allow the recipient to evaluate the worth of the offer and make a reasoned decision whether to accept the offer." (*Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 764 (*Fassberg*).) "Ascertaining the terms of an offer, including the determination whether the offer is sufficiently specific and certain for purposes of section 998, is a question involving the interpretation of a writing." (*Id.* at p. 765.) Where, as here, the issue is the application of section 998 to an undisputed set of facts, our review is de novo. (*Ibid.*) "The party offering the settlement bears the burden of demonstrating that a section 998 offer is valid, and the offer must be strictly construed in favor of the party subjected to its operation." (*Persson v. Smart Inventions, Inc.* (2005) 125 Cal.App.4th 1141, 1170.)

Under established canons of statutory construction, "[i]f the language is clear and unambiguous, the plain meaning governs." (*Silicon Valley Taxpayers Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 444; *Young v. Gannon* (2002) 97 Cal.App.4th 209, 223 [the "court looks first to the language of the statute; if clear and unambiguous, the court will give effect to its plain meaning"].)

In our view, the language of section 998 is undoubtedly clear and unambiguous. It provides: "The written offer *shall* include a statement of the offer, containing the terms and conditions of the judgment or award, and a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted." (§ 998, subd. (b), italics added.) The term "shall" is mandatory. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443 ["It is a well-settled principle of statutory construction that the word . . . 'shall' is ordinarily construed as mandatory"].)

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5 For ease of reference, we will hereinafter refer to this provision as the "written acceptance provision."

Thus, under the plain meaning of section 998, a valid offer *must* be in writing and include a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted.

Here, the County's offer did not include a provision that allowed Suarez to indicate acceptance of the offer by signing a statement that he accepted the offer. Thus, the County's offer did not comply with the clear and unambiguous terms of the statute.

The County concedes that its offer did not include a provision that allowed Suarez to indicate acceptance of the offer by signing a statement that he accepted the offer. Instead, citing *Berg v. Darden* (2004) 120 Cal.App.4th 721 (*Berg*), the County contends that the offer's reference to section 998, "[w]hen read in conjunction with the remaining terms of the offer, rendered the offer sufficient as a matter of law."

Berg is distinguishable because it addressed an entirely different portion of section 998. At issue in Berg was whether a party's failure to indicate the exact terms under which judgment would be taken in its offer to compromise rendered the offer invalid under section 998.[6] The Court of Appeal held that if "written offer of compromise is made under section 998 and, if accepted, will result in entry of judgment – the expected and standard procedural result unless specific terms and conditions stated in the offer provide otherwise – the offer need not identically track the language of the statute under which it was made." (*Berg*, *supra*, 120 Cal.App.4th at p. 730.) This case, in contrast, deals with the provision that sets forth two mandatory requirements about what *must* be included in a section 998 offer: the offer must be written and it must contain a provision

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6 *Berg* was decided before the Legislature amended section 998 in 2005 to include the provision at issue in this case. When *Berg* was decided, section 998 provided in relevant part: Any party to an action may "serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at the time . . . ." The legislative history of this 2005 amendment submitted by the County, of which we take judicial notice, indicates that the 2005 amendment was for the following purpose: "The Judicial Council notes that CCP section 998 requires that an offer to compromise a claim be in writing. (See CCP section 998(b).) But the statute has no parallel provision expressly requiring acceptance to also be in writing. To avoid confusion that can arise with oral acceptances, section 11 of the bill amends the statute to so require."

stating that the offeror can accept the offer by indicating his acceptance by signing a statement to that effect.

For the foregoing reasons, we affirm the portion of the trial court's order ruling that the County's section 998 offer was invalid because it did not contain a written acceptance provision.

III. The County's entitlement to attorney fees and costs incurred defending the fourth and fifth causes of action

Section 1038 provides in relevant part:

"(a) In any civil proceeding under the California Tort Claims Act . . . the court, upon motion of the defendant . . . shall, at the time of the granting of any summary judgment, motion for directed verdict, motion for judgment under Section 631.8, or any nonsuit . . . or at a later time . . . determine whether or not the plaintiff . . . brought the proceeding with reasonable cause and in the good faith belief that there was a justifiable controversy under the facts and law which warranted the filing of the complaint, petition, cross-complaint, or complaint in intervention. If the court should determine that the proceeding was not brought in good faith and with reasonable cause, an additional issue shall be decided as to the defense costs reasonably and necessarily incurred by the party or parties opposing the proceeding, and the court shall render judgment in favor of that party in the amount of all reasonable and necessary defense costs, in addition to those costs normally awarded to the prevailing party. . . .

"(b) 'Defense costs,' as used in this section, shall include reasonable attorneys' fees . . . .

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"(d) This section shall only apply if the defendant or cross-defendant has made a motion for summary judgment, judgment under Section 631.8, directed verdict, or nonsuit and the motion is granted."

The County moved for the attorney fees and costs incurred as a result of defending against the fourth and fifth causes of action (claims made under the California Tort Claims Act). The trial court ruled that the County was ineligible to seek attorney fees under section 1038 because it obtained summary adjudication, and not summary judgment, on those claims. The trial court made no finding as to whether Suarez brought the fourth and fifth causes of action with reasonable cause and in the good faith belief that there was a justifiable controversy under the facts and law.

As referenced above, under established canons of statutory construction, "[i]f the language is clear and unambiguous, the plain meaning governs." (*Silicon Valley Taxpayers Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 444.) Section 1038 does not specifically refer to the granting of a defendant's motion for summary adjudication as one of the circumstances that triggers the right to file a motion for attorney fees. Instead, it refers only to motions for (1) summary judgment; (2) judgment under Code of Civil Procedure section 631.8[7]; (3) directed verdict; or (4) nonsuit. (§ 1038, subds. (a), (d).) The County did not succeed in its summary judgment motion and thus, under the clear and unambiguous terms of section 1038, it is not eligible to seek attorney fees.

The Legislature could have specified that summary adjudications triggered the ability to bring a motion under section 1038, but it did not. At the time that the Legislature enacted section 1038 in 1980, the statute governing motions for summary judgment did not specifically use the words "summary adjudication," but it did refer to the ability of the court to adjudicate fewer than all of the issues raised in a summary judgment motion.[8] Further, at the time it was enacted, section 1038 stated that a motion for attorney fees could be made "at the time of the granting of any summary judgment or nonsuit." (Stats.1980, ch. 1209, § 1, p. 4088.) Section 1038 was amended in 1986 to specify, as it does currently, that a "motion for directed verdict" and a "motion for judgment under section 631.8" also triggers a plaintiff's ability to file a motion for attorney fees. (Stats.1986, ch. 377, § 18, p. 1581.) In 1986, the summary judgment statute specifically referred to summary adjudication as an alternative type of motion

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7 Section 631.8 provides that "[a]fter a party has completed his presentation of evidence in a trial by the court, the other party, without waiving his right to offer evidence in support of his defense or in rebuttal in the event the motion is not granted, may move for a judgment." (§ 631.8, subd. (a).)

8 The statute stated, "If it appears that the proof supports the granting of such motion as to some but not all the issues involved in the action, or that one or more of the issues raised by a claim is admitted, or that one or more of the issues raised by a defense is conceded, the court shall, by order, specify that such issues are without substantial controversy." (Stats.1973, ch. 366, § 2, p. 808.)

adjudicating less than all of the issues in an action. (Stats.1984, ch. 171, § 1, pp. 544-547.) When it amended section 1038 in 1986 to broaden the type of rulings that triggered the right to bring a motion for attorney fees (see Stats.1986, ch. 377, § 18, pp. 1580-1581), the Legislature could have amended the statute to specify that an award of attorney fees could be made after a successful motion for summary adjudication, but the Legislature did not do so. (See *Estate of McDill* (1975) 14 Cal.3d 831, 837-838 [“‘The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended’”].)

While it may be true, as the County argues, that including summary adjudications within the purview of section 1038 would further the statute’s purpose of providing “public entities with a protective remedy for defending against unmeritorious litigation” (*Knight v. City of Capitola* (1992) 4 Cal.App.4th 918, 931), that is an argument for the Legislature. We are bound to follow the statute as enacted.

IV. The County’s entitlement to attorney fees and costs on the third cause of action

The County moved for the attorney fees it incurred defending against Suarez’s third cause of action (violation of 42 U.S.C. § 1983). According to the County, it was entitled to attorney fees because it obtained a summary adjudication on a purportedly frivolous cause of action.

42 U.S.C. § 1988 provides: “In any action or proceeding to enforce a provision of section[] . . . 1983 . . . of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs . . . .”

Here, the trial court failed to rule on the County’s motion altogether. At the June 30, 2008 hearing, the trial court ruled that the County was not entitled to attorney fees under section 1038. When asked by the County for a ruling on its motion for attorney fees and costs under 42 U.S.C. § 1988, the trial court responded: “I’ll get to

that." The trial court concluded the hearing without addressing the County's motion. At the August 29, 2008 hearing, the County again directed the Court's attention to the fact that it was seeking attorney fees and costs under 42 U.S.C. § 1988. The court stated that it would address the issue in its written order. The written order, however, contained no discussion of the County's motion under 42 U.S.C. § 1988. The trial court's failure to rule on the County's motion and exercise its discretion constituted an abuse of discretion. (*Richards, Watson & Gershon v. King* (1995) 39 Cal.App.4th 1176, 1180 ["The trial court's failure to exercise its discretion was itself an abuse of discretion"].)

For this reason, we remand with directions to the trial court to decide whether the County is entitled to attorney fees and costs incurred defending the third cause of action under 42 U.S.C. § 1988. We express no opinion as to whether the County would be entitled to its attorney fees under this provision, but note the "authorization of an award of attorney's fees under 42 U.S.C. § 1988 applies differently to prevailing defendants than to prevailing plaintiffs." (*Vernon v. City of Los Angeles* (9th Cir. 1994) 27 F.3d 1385, 1402.) "Plaintiffs prevailing in a civil rights action should ordinarily recover attorney fees unless special circumstances would render such an award 'unjust.'" (*Ibid.*) However, a prevailing defendant should not routinely be awarded attorney fees simply because he has succeeded, but rather only where the action is found to be "unreasonable, frivolous, meritless, or vexatious." (*Ibid.*) "Thus the mere fact that a defendant prevails does not automatically support an award of fees." (*Ibid.*) Any less stringent of a standard "would substantially add to the risks inhering in most litigation and would undercut the efforts of Congress to promote the vigorous enforcement" of civil rights. (*Hughes v. Rowe* (1980) 449 U.S. 5, 15.)

V. Suarez's entitlement to attorney fees and costs

The County argues that even if we conclude its 998 offer is invalid, Suarez is still not entitled to his attorney fees because he is not the prevailing party in the underlying ADA action.

Suarez moved for attorney fees and costs under 42 U.S.C. § 12205, which provides: "In any action or administrative proceeding commenced pursuant to [the ADA], the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs . . . ."[9]

"Congress passed the ADA. . . in 1990 to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." (*Molski v. M.J. Cable, Inc*., (9th Cir. 2007) 481 F.3d 724, 730.) "And Congress enacted the fee-shifting provisions of civil rights statutes 'to ensure effective access to the judicial process for persons with civil rights grievances.'" (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 429.) "If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance" their discrimination claims. (*Jankey v. Poop Deck* (9th Cir. 2008) 537 F.3d 1122, 1131.) Consequently, recovery is "'the rule rather than the exception.'" (*Ibid*.)

In an action under the ADA, "'a plaintiff "prevails" when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.'" (*Fischer v. SJB-P.D. Inc.* (9th Cir. 2000) 214 F.3d 1115, 1118 citing *Farrar v. Hobby* (1992) 506 U.S. 103, 111-112.) "'[A] material alteration of the legal relationship occurs [when] the plaintiff becomes entitled to enforce a judgment, consent decree, or settlement against the defendant.'" (*Ibid*.) "In these situations, the legal relationship is altered because the plaintiff can force the defendant to do something he otherwise would not have to do." (*Ibid*.) The Supreme Court has adopted a "generous formulation" of the

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9 Suarez also moved for attorney fees and costs under 28 C.F.R. § 35.175, which has identical language: "In any action or administrative proceeding commenced pursuant to [the ADA], the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs . . . ." The parties do not contend that the federal statute is any more or less extensive than the regulation. Thus, for ease of reference, we will refer to 42 U.S.C. § 12205 in our analysis.

term prevailing party in cases involving civil rights violations, including violation of the ADA. (*Farrar v. Hobby*, *supra*, 506 U.S. at p. 109.)

Here, Suarez sought compensatory damages for the County's alleged violation of the ADA and a jury awarded Suarez $5,000 in compensatory damages after finding that the County discriminated against Suarez on the basis of his hearing impairment and was deliberately indifferent to his rights. This certainly constitutes relief on the merits of his claim. Moreover, Suarez has a judgment in the amount of $5,000 against the County, which the County has not appealed. Suarez is entitled to enforce this judgment against the County, which materially alters the relationship between them.

The County offers a number of reasons why we should not consider Suarez the "prevailing party." First, "it was more than possible that an award of reasonable fees to County could have exceeded Suarez's reasonable fee award combined with his recovery at trial, making County the prevailing party by the first definition." Assuming, without deciding, that the County is correct in its assertion that a litigant's "prevailing party" status turns on its net recovery of attorney fees, the County's argument still fails because Suarez's award of attorney fees ($193,582.50) far exceeded the amount the County requested ($113,512.50).[10]

Second, the County contends it "defeated the great majority of Suarez's case through motion practice." But the County identifies no authority (nor has our research identified such authority) to support the proposition that in order to receive the fee-shifting benefits of the ADA, a plaintiff must prevail on claims other than ADA.

Third, the County contends that Suarez "received only $5,000, while asking for a six-digit recovery." The Supreme Court rejected this argument in *Farrar*, stating the "prevailing party inquiry does not turn on the magnitude of the relief obtained." (*Farrar*, *supra*, 506 U.S. at p. 114; see also *Stivers v. Pierce* (9th Cir. 1995) 71 F.3d 732, 751

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10 The County contends that the award of $193,582.50 was unreasonable and that an accurate accounting of attorney fees incurred in Humberto's prosecution of the ADA claim would be "far less" than its "reasonable" request for over $113,000. As we explain in the next section, the County has failed to show that the amount awarded by the trial court constituted an abuse of discretion.

[stating that "[t]he degree of success is irrelevant to the question whether the plaintiff is the prevailing party"].)

VI. Reasonableness of Suarez's attorney fees award

The County contends that the trial court's award of attorney fees in the amount of $193,582.50 was unreasonable.

"We reemphasize that the district court has discretion in determining the amount of a fee award. This is appropriate in view of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 437 (*Hensley*).)

"Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee." (*Hensley, supra,* 461 U.S. at p. 440.) However, "where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised." (*Ibid*; *Fischer v. SJB-P.D., Inc*., *supra*, 214 F.3d at pp. 1119-1120 [applying *Hensley* guidelines to ADA claimant under 42 U.S.C. § 12205].) "The most critical factor is the degree of success obtained." (*Hensley, supra*, 461 U.S. at p. 436.)

In his motion for attorney fees, Suarez submitted the declarations of three attorneys who worked on his case:

Thomas Dorogi averred that he spent 243.9 hours on the case at a rate of $325.00 per hour, for a total of $86,415.50. According to Dorogi, he spent a bulk of this time performing legal research (19.6 hours), drafting and responding to pre-trial motions (62.1 hours), preparing for trial (40.9 hours), and attending trial (65.8 hours). Dorogi also averred that another attorney (K. Lowry Jr.) spent 68.7 hours managing the file for a total of $22,327.50 in fees.

Daniel Holzman averred that he spent 172.6 hours on the case at a rate of $400.00 per hour, for a total of $69,040.00. According to Holzman, he spent a bulk of this time preparing for trial (63 hours), and attending trial (80.7 hours).

Marshall Caskey averred that he spent 31.6 hours on the case at a rate of $500.00 per hour, for a total of $15,800.00. According to Caskey, he spent a bulk of this time performing legal research (4.1 hours), drafting and responding to pre-trial motions (4.1 hours), and preparing for trial (10.6 hours).

In our view, the trial court's award of attorney fees was not an abuse of discretion. Dorogi averred that he and his colleagues handled Suarez's case on a contingency basis and had not been paid for any of the work performed on the case as of the filing date of the motion for fees. According to Dorogi, the "time and labor required in prosecuting this action through trial was substantial" because Suarez was required "to prove intentional discrimination" under the ADA, thereby making his "evidentiary burden at trial [] high." Dorogi averred that he and his colleagues took the depositions of seven County employees and spent much time reconfiguring trial strategy after the County disclosed a crucial document near the start of trial. The trial court, which had a "superior understanding of the litigation," was entitled to find that based on these declarations, the attorney fees requested by Suarez was reasonable. (*Hensley, supra*, 461 U.S. at p. 437.)

Moreover, there is no question that Suarez obtained complete success in this matter. (*Hensley, supra*, 461 U.S. at p. 436 ["The most critical factor is the degree of success obtained"].) The jury found that the County discriminated against him based on his hearing impairment and that it was deliberately indifferent to his rights. Although the jury awarded him $5,000, which was less than what he sought, this alone does not demonstrate that he did not have an unqualified success.

The County contends that Suarez's attorney fees motion failed to distinguish between the time his attorneys spent prosecuting Suarez's successful cause of action and the time they spent prosecuting his unsuccessful causes of action. But it is well established that a plaintiff who is ultimately successful on only some causes of action arising from a common nucleus of facts may still receive full compensation for fees

expended in prosecuting the entire complaint. (*Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 430-431.) Here, it was not unreasonable for the trial court to conclude that all of Suarez's causes of actions arose from the same common nucleus of alleged facts – namely that the County discriminated against his disability by declining his requests for a sign language interpreter while he was in jail. (*In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 769 [in the context of an attorney fees award, "the trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made"].) Likewise, it was not unreasonable for the trial court to conclude the time spent by Suarez's attorneys prosecuting his claims against the County would have been incurred regardless of whether there were other named defendants.

As a fallback argument, the County asserts that the trial court's failure to discuss why it awarded the amount that it did constituted prejudicial error. Here, the trial court found that Suarez's request for fees was "reasonable." The County fails to cite authority for the proposition that a trial court's failure to set forth the reasons supporting its award of attorney fees constitutes reversible error.

"In the absence of a clear showing of abuse, [a trial court's determination on attorney fees] will not be disturbed on appeal." (*In re Marriage of Sullivan*, *supra*, 37 Cal.3d at p. 769.) The County has failed to meet its burden on appeal of demonstrating a clear showing of abuse and we therefore affirm the amount of attorney fees awarded to Suarez.

Related to this issue, the County contends the trial court did not rule on its motion to tax certain individual costs awarded to Suarez. The County is correct. While we affirm the trial court's ruling that Suarez is entitled to its defense costs as the prevailing party, we remand to the trial court to decide whether any of the County's objections to the individual costs raised in the County's motion to tax costs sought by Suarez have merit.

VII. Judicial Bias

A court engages in misconduct if it makes persistent disparaging or discourteous comments about a party, lawyer or witnesses, conveying the impression they are not trustworthy or the case lacks merit. (*People v. Fudge* (1994) 7 Cal.4th 1075, 1107 (*Fudge*).) The conduct is viewed under an objective standard to determine whether a reasonable person would entertain doubts about the court's impartiality. (*Hall v. Harker* (1999) 69 Cal.App.4th 836, 841 (*Hall*), disapproved on another ground by *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 349.) Judicial bias or prejudice consists of a mental attitude or disposition regarding a party. When reviewing a claim of bias, "'the litigants' necessarily partisan views should not provide the applicable frame of reference. [Citations.]'" (*Roitz v. Coldwell Banker Residential Brokerage Co*. (1998) 62 Cal.App.4th 716, 724.) Bias and prejudice must be clearly established. "Neither strained relations between a judge and an attorney for a party nor '[e]xpressions of opinion uttered by a judge, in what he conceived to be a discharge of his official duties, are . . . evidence of bias or prejudice. [Citation.]'" (*Ibid*.) The appellant has the burden of establishing facts supporting a claim of judicial bias (*Betz v. Pankow* (1993) 16 Cal.App.4th 919, 926), and showing prejudice. (See *Fudge*, *supra*, 7 Cal.4th at p. 1109.)

We have scrutinized the record and have failed to identify a single instance of the trial judge's conduct that suggests bias. Tellingly, at no point during the proceedings below did the County raise the specter of bias or move to disqualify the trial judge.

The County directs this court to a laundry list of interlocutory rulings by the trial court that purportedly demonstrate judicial bias. But these rulings, which include the denial of the County's motion for summary judgment and the denial of the County's motion for attorney fees and costs, were based on the merits of the issues as viewed by the trial court. While we conclude the trial court erred in some respects as discussed above, we do not believe that these decisions were a product of judicial bias. We likewise reject the County's contention that the court "signed whatever Suarez put in front of it, despite various issues in active dispute." The record belies this contention.

While it is true that the trial court signed a proposed judgment prepared by Suarez with an incorrect interest rate, the trial court signed an amended judgment with the correct interest rate when the mistake was pointed out by the County. Finally, the County also makes much ado about the fact that the trial court permitted Suarez to argue in his reply to the County's opposition to his fee motion that the section 998 offer was invalid because it did not contain a written acceptance provision. The County had ample opportunity to respond to Suarez's argument. Thus, even if the court's allowance of this argument were evidence of error, such error was not prejudicial.

DISPOSITION

The post-judgment order is affirmed in part and reversed in part. We remand the matter to the trial court for further proceedings consistent with this opinion. Each party shall bear their costs on appeal.

NOT TO BE PUBLISHED.

FERNS, J.*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

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* Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.